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ABDUL LATIF PUTEH & ORS v. PENTADBIR TANAH JAJAHAN PASIR MAS & ANOR

FEDERAL COURT, PUTRAJAYA
VERNON ONG LAM KIAT FCJ
HASNAH MOHAMMED HASHIM FCJ
B MARY LIM FCJ
[APPEAL NO: 01(i)-21-05-2022(D)]
16 NOVEMBER 2022

Abstract – *The participants of group settlement areas under the Land (Group Settlement Areas) Act 1960 ('Act') who had been in occupation, cultivating designated crops under the Act, in this case, for more than 30 years without any interruption, occupy the land in expectation of title. Hence, any interruption to their livelihood is a matter to be determined in full trial and not to be disposed of summarily.*

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CIVIL PROCEDURE: *Striking out – Appeal against – Land settlers participants in group settlement area programme – Land developed for more than 30 years – Rubber trees felled without land settlers' knowledge and consent – Action by land settlers for violation of rights – Whether land settlers had legitimate rights over rubber trees on land – Whether allowed to cultivate and cultivated designated crops – Whether occupation in group settlement areas in expectation of title – Whether matter could be summarily disposed of – Whether required determination in full trial – Land (Group Settlement Areas) Act 1960, ss. 4 & 5*

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The appellants were largely the original participants selected by FELCRA Berhad to open or clear and develop 2,656 acres of land known as Kawasan Rancangan FELCRA Bukit Tandak ('KRBT'), developed under the Land (Group Settlement Areas) Act 1960 ('Act') since early 1980. KRBT was never gazetted as a group settlement area under s. 4 of the Act. The appellants claimed that they were initially allocated six acres of land each in KRBT as
G agreed in an agreement with FELCRA which, however, was not formalised. Still, the appellants occupied the lands allotted and they cultivated, amongst others, oil palm and rubber trees, spending substantial sums over the past 30 over years. At the same time, the appellants were also alienated separate parcels of land within KRBT for them to erect their dwelling or residential
H houses. The respondents were said to be aware of the appellants' presence and occupation of the lands. Throughout this period, the appellants engaged with FELCRA and attended all meetings called by FELCRA in relation to the development of KRBT. In 2014, the acreage allotted was allegedly reduced to three acres per participant. The appellants were not happy and
I therefore, sued the first and second respondents ('Suit 1'). Suit 1 was dismissed by the High Court and the decision was affirmed by the Court of Appeal. Leave to appeal was refused by the Federal Court. During the

pendency of Suit 1 before the Federal Court, the first respondent called for tenders for the felling of rubber trees which the appellants claimed they had planted on the lands in question. The appellants thus filed a second suit but later, discontinued the said suit. Thereafter, the present suit was commenced ('Suit 3'). In Suit 3, the appellants claimed that, despite being fully aware of their cultivation of the rubber trees for over 30 years, the respondents, *inter alia*, conspired, acted with *mala fides* and/or negligence in felling the rubber trees without their prior knowledge or consent and that such acts were a violation of their legitimate rights over the rubber trees. The appellants claimed damages and compensation for loss of the rubber trees. Other reliefs sought included declaratory orders of entitlement to the rubber trees planted by them. The respondents, while not disputing the appellants' contention, principally pleaded that: (i) the appellants' participation in the group settlement area programme for KRBT did not alter the fact that the respondents remained the legal owners of the lands; (ii) the appellants were not registered administratively with FELCRA; and (iii) pursuant to s. 5 of the National Land Code, any rubber trees planted by the appellants were the property of the respondents as the second respondent owned the lands in question. Consequently, the respondents were not obliged to inform or obtain the consent of the appellants before felling or entering into tenders for the felling of the rubber trees. The respondents also counterclaimed, seeking a declaratory order to the effect that the rubber trees on the lands in question were lawfully owned by the second respondent. The respondents filed encl. 29 to strike out the claim on the basis of *res judicata*, in that, the appellants' claim had been adjudicated in Suit 1 where it was held that the appellants did not have any rights in law or equity against the respondents. The High Court allowed the respondents' application on the ground that the action was 'obviously unsustainable' as the appellants lacked *locus standi* to maintain the action. The decision was affirmed by the Court of Appeal. Hence, the Federal Court granted leave to appeal, under s. 96(a) of the Courts of Judicature Act 1964.

Held (allowing appeal with costs; remitting matter to High Court for full trial)

Per Mary Lim FCJ delivering the judgment of the court:

(1) The Act envisages the opening up and development of State lands through group settlement programmes or projects according to the terms, conditions, restrictions, obligations and arrangements as set out in Parts II to V of the Act. Tracts of State lands are first declared as designated areas for the purposes of the Act. In turn, these areas may be declared as group settlement areas. These group settlement areas may then be declared as rural or urban holdings and persons eligible under the Act to occupy the holdings, occupy the same in expectation of title. Participants who are invited to participate in the programme clear the

lands allocated and cultivate crops as specified in s. 5 of the Act. These participants or settlers live in these group settlement areas and form pioneer generations of families. (paras 21-23)

(2) In the present appeal, it was clear that there was a group settlement area known as KRBT. Whether or not this area had been gazetted and its ramifications on the appellants' claim, if at all, was a question for determination at a full trial. Regardless the acreage of the lands comprised in KRBT, the presence and thereby, the appellants' occupation and participation in the KRBT was, in fact, not denied by the respondents. The respondents were fully aware of the occupation of the appellants and that such occupation as a group settlement area was as envisaged under the Act. The respondents too, were not suggesting that the appellants were illegal occupants, squatters or some similar characterisation. The appellants, during their occupation for over 30 years on the land, had been allowed to cultivate and did in fact cultivate oil palm and rubber trees, both designated as appropriate crops to be planted. Subject to the conditions under the Act, occupation in these group settlement areas involved an occupation in expectation of title. (paras 25, 27 & 28)

(3) The matter of the felling of the rubber trees arose during the pendency of Suit 1. Hence, the issue of *res judicata* did not arise. (para 29)

(4) What was in controversy was the manner of selection of the appellants, as participants, to occupy and cultivate the designated crops under the Act, that it was by FELCRA Berhad where no agreement was finally drawn up; that the appellants' names were not registered and that the lands in question were not gazetted. Whether, in these principal circumstances, the appellants had any interests or rights to the rubber trees that they had cultivated for such a long undisturbed period thereby entitling them to any relief including compensation, was a real and substantive matter or issue of law clearly requiring full and proper examination at trial. On the pleaded facts and circumstances particularly under the restrictions and conditions of the Act, the appellants did have a reasonable cause of action which merited proper determination and not summarily disposed of in the manner conducted by the courts below. (paras 31 & 32)

Bahasa Melayu *Headnotes*

Perayu-perayu sebahagian besarnya adalah peserta asal yang dipilih FELCRA Berhad untuk meneroka atau membersihkan dan mengusahakan 2,656 ekar tanah yang dikenali sebagai Kawasan Rancangan FELCRA Bukit Tandak ('KRBT'), dibangunkan bawah Akta Tanah (Kawasan Penempatan Berkelompok) 1960 ('Akta') semenjak awal 1980. KRBT tidak pernah diwartakan sebagai penempatan berkelompok bawah s. 4 Akta. Perayu-

perayu menyatakan bahawa mereka, pada awalnya, diberi enam ekar tanah setiap seorang dalam KRBT seperti yang disetujui dalam perjanjian dengan FELCRA yang, walau bagaimanapun, tidak dijadikan formal. Akan tetapi, perayu-perayu masih menduduki tanah-tanah yang diberi dan mereka menanam, antara lain, pokok-pokok kelapa sawit dan getah, membelanjakan jumlah besar selama lebih 30 tahun. Pada masa yang sama, perayu-perayu juga diberi milik bahagian tanah berasingan dalam KRBT untuk membina tempat tinggal atau rumah mereka. Responden-responden dikatakan menyedari tentang kehadiran dan penempatan perayu-perayu atas tanah tersebut. Selama tempoh itu, perayu-perayu berurusan dengan FELCRA dan menghadiri kesemua mesyuarat yang dipanggil oleh FELCRA berkaitan pembangunan KRBT. Pada 2014, jumlah ekar yang diberi didakwa dikurangkan pada tiga ekar untuk setiap peserta. Perayu-perayu tidak berpuas hati dan oleh itu, menyaman responden pertama dan kedua ('Guaman 1'). Guaman 1 ditolak Mahkamah Tinggi dan keputusan itu disahkan oleh Mahkamah Rayuan. Kebenaran merayu ditolak oleh Mahkamah Persekutuan. Semasa Guaman 1 sedang berjalan di Mahkamah Persekutuan, responden pertama memanggil tender penebangan pokok-pokok getah yang perayu katakan ditanam oleh mereka atas tanah yang dipersoalkan itu. Perayu-perayu oleh itu, memfailkan guaman kedua, namun kemudian menghentikan guaman itu. Selepas itu, guaman ini dimulakan ('Guaman 3'). Dalam Guaman 3, perayu-perayu menyatakan bahawa walaupun sedar sepenuhnya tentang penanaman pokok-pokok getah selama lebih 30 tahun, responden-responden, antara lain, bersubahat, bertindak secara *mala fides* dan/atau cuai apabila menebang pokok-pokok getah tersebut tanpa pengetahuan atau kebenaran mereka dan tindakan sedemikian adalah pencabulan hak sah mereka terhadap pokok-pokok getah tersebut. Perayu-perayu menuntut ganti rugi dan pampasan untuk kehilangan pokok-pokok getah tersebut. Relief-relief lain yang dituntut termasuk perintah deklarasi untuk hak pokok-pokok getah yang mereka tanam. Responden-responden, walaupun tidak menafikan hujahan perayu-perayu, pada asasnya memplidkan bahawa (i) penyertaan perayu-perayu dalam program kawasan penempatan berkelompok untuk KRBT tidak mengubah fakta bahawa responden-responden kekal sebagai pemilik sah tanah-tanah itu; (ii) perayu-perayu tidak berdaftar secara pentadbiran dengan FELCRA; dan (iii) menurut s. 5 Kanun Tanah Negara, apa-apa pokok getah yang ditanam perayu-perayu adalah harta responden-responden kerana responden kedua memiliki tanah yang dipersoalkan itu. Akibatnya, responden-responden tidak berkewajipan untuk memaklumkan atau memperoleh persetujuan perayu-perayu sebelum penebangan atau memasuki tender untuk menebang pokok-pokok getah tersebut. Responden-responden juga menuntut balas, memohon perintah deklarasi bahawa pokok-pokok getah atas tanah itu, dari segi undang-undang, dimiliki oleh responden kedua. Responden-responden

memfailkan lampiran 29 untuk membatalkan tuntutan atas alasan *res judicata*, iaitu, tuntutan perayu-perayu telah dihakimi dalam Guaman 1 apabila diputuskan bahawa perayu-perayu tiada apa-apa hak dari segi undang-undang atau ekuiti terhadap responden-responden. Mahkamah Tinggi membenarkan permohonan responden-responden atas alasan tindakan tersebut 'jelas tidak boleh dikekalkan' kerana perayu-perayu tiada *locus standi* untuk mengekalkan tindakan tersebut. Keputusan itu disahkan Mahkamah Rayuan. Oleh itu, Mahkamah Persekutuan memberi kebenaran merayu, bawah s. 96(a) Akta Mahkamah Kehakiman 1964.

Diputuskan (membenarkan rayuan dengan kos; mengembalikan perkara ke Mahkamah Tinggi untuk perbicaraan penuh)
Oleh Mary Lim HMP menyampaikan penghakiman mahkamah:

(1) Akta tersebut membayangkan penerokaan dan pembangunan tanah-tanah Negeri melalui program atau projek penempatan berkelompok menurut terma-terma, syarat-syarat, had-had, kewajipan-kewajipan dan urusan-urusan seperti yang dinyatakan dalam Bahagian II hingga V Akta. Jalur tanah Negeri mula-mula diisytiharkan sebagai kawasan yang dikhususkan untuk tujuan Akta. Dengan itu, kawasan-kawasan ini boleh diisytiharkan sebagai kawasan penempatan berkelompok. Kawasan-kawasan penempatan berkelompok ini kemudian boleh diisytiharkan sebagai pegangan luar bandar atau bandar dan orang yang berhak bawah Akta untuk menduduki pegangan tersebut akan menduduki tempat itu dengan harapan akan mendapat hak milik. Peserta-peserta yang dipelawa mengambil bahagian dalam program itu membersihkan tanah-tanah itu dan mengusahakan hasil pertanian seperti yang dinyatakan dalam s. 5 Akta. Peserta-peserta atau peneroka-peneroka ini menetap dalam kawasan penempatan berkelompok ini dan membentuk generasi perintis keluarga peneroka.

(2) Dalam rayuan ini, jelas terdapat kawasan penempatan berkelompok yang dikenali sebagai KRBT. Kawasan ini, sama ada telah atau tidak diwartakan dan kesannya yang merumitkan terhadap tuntutan perayu, jika ada, adalah persoalan yang perlu diputuskan dalam perbicaraan penuh. Tanpa mengira luas tanah yang membentuk KRBT, kehadiran dan dengan itu, penempatan dan penyertaan perayu-perayu dalam KRBT adalah, sebenarnya, tidak dinafikan oleh responden-responden. Responden-responden menyedari sepenuhnya pendudukan perayu-perayu dan bahawa pendudukan sedemikian sebagai kawasan penempatan berkelompok adalah seperti yang dibayangkan bawah Akta. Responden-responden juga tidak mencadangkan bahawa perayu-perayu adalah penduduk tidak sah, setinggan atau dengan ciri-ciri seperti itu. Perayu-perayu, semasa pendudukan mereka selama lebih 30 tahun atas tanah itu, telah dibenarkan mengusahakan tanah itu dan telah pun

menanam pokok-pokok kelapa sawit dan getah, kedua-duanya dinyatakan sebagai tanaman sesuai. Tertakluk pada syarat-syarat bawah Akta, pendudukan dalam kawasan penempatan berkelompok ini melibatkan pendudukan dengan harapan mendapat hak milik.

(3) Perkara berkaitan penebangan pokok-pokok getah timbul semasa perjalanan Guaman 1. Oleh itu, isu *res judicata* tidak timbul.

(4) Perkara yang menjadi kontroversi adalah cara pemilihan perayu-perayu sebagai peserta untuk menduduki dan mengusahakan tanaman yang dinyatakan bawah Akta, bahawa itu adalah oleh FELCRA Berhad apabila tiada perjanjian muktamad; nama-nama perayu tidak didaftarkan dan bahawa tanah-tanah itu tidak diwartakan. Sama ada dalam hal keadaan utama ini perayu-perayu mempunyai apa-apa kepentingan atau hak terhadap pokok-pokok getah yang ditanam mereka untuk tempoh yang lama tanpa apa-apa gangguan, dengan itu, memberikan mereka hak pada atau apa-apa relief termasuk pampasan, adalah perkara sebenar dan substantif atau isu undang-undang yang jelas memerlukan pertimbangan sewajarnya dalam perbicaraan. Berdasarkan fakta-fakta yang diplidkan dan hal keadaan, khususnya bawah sekatan dan syarat-syarat Akta, perayu-perayu sememangnya mempunyai kausa tindakan munasabah yang mewajarkan penentuan yang sepatutnya dan bukan diputuskan secara terus seperti yang dibuat mahkamah-mahkamah di bawah.

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Seruan Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Pahang Darul Makmur & Anor [2016] 3 CLJ 1 FC ***(refd)***

Tan Wei Hong & Ors v. Malaysia Airlines Bhd & Other Appeals [2018] 9 CLJ 425 FC ***(refd)***

Wiggins Teape (M) Sdn Bhd v. Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd & Ors As Objectors [1979] 1 LNS 125 HC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 96(a)

Land (Group Settlement Areas) Act 1960, ss. 3, 4, 5, 6, 12, 19, 34

Land Development Act 1956, s. 3

National Land Code, ss. 5, 341

National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966, s. 6

For the appellants - Mohamad Nor Azam Rashid Zainol Rashid & Mohd Nasir Abdullah; M/s Mohd Nasir & Co

For the respondents - Adam Mohamed; Penolong Penasihat Undang-Undang Pejabat Penasihat Undang-Undang Negeri Kelantan

[Editor's note: For the Court of Appeal judgment, please see Abdul Latif Puteh & Ors v. Pentadbir Tanah Jajahan Pasir Mas & Anor [2022] 9 CLJ 1 (overruled).]

Reported by S Barathi

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JUDGMENT

Mary Lim FCJ:

[1] The 348 appellants before us were the plaintiffs whose claims against the respondents were struck out by the High Court upon the application of
B the respondents (encl. 29). The principal if not the sole reason for allowing the interlocutory application was because the action was "obviously unsustainable" as the plaintiffs lacked *locus standi* to maintain the action.

[2] The decision of the High Court was affirmed by the Court of Appeal.

C **[3]** On 9 May 2022, this court granted leave to appeal under s. 96(a) of the Courts of Judicature Act 1964 (Act 91) on the following four questions of law:

(i) Sama ada pemakaian Group Settlement Act (GSA) dan seksyen 5 Kanun Tanah Negara terpakai untuk kawasan-kawasan tanah rancangan;

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(ii) Sama ada prinsip ekuiti terpakai untuk pokok-pokok yang ditanam di kawasan tanah rancangan selaras dengan Group Settlement Act (GSA);

(iii) Sama ada peserta yang dijemput, yang mengusahakan, yang
E mengeluarkan modal berhak ke atas pokok-pokok getah yang diusahakan mereka di kawasan tanah KRBT tersebut;

(iv) Sama ada pemilikan pokok-pokok getah terikat kepada pemilikan tanah sebagaimana seksyen 5 Kanun Tanah Negara tanpa mengambil kira faktor kependudukan, pengusahaan dan penanaman pokok-pokok getah tersebut sejak 30 tahun serta kos-kos yang
F mencecah RM718,247.83 dan RM5,800,155.78 yang dibiayai oleh Pemohon-Pemohon.

[4] Upon due consideration of the submissions of all parties, grounds of decisions, and the records of appeal, we unanimously allowed the appeal.
G We set aside the decisions of the Court of Appeal and the High Court and remitted the case to the High Court for a full trial. We were of the unanimous opinion that contrary to the findings of the courts below, there was a reasonable cause of action upon which the plaintiffs' claims ought and must proceed to full trial. In this connection, the four questions of law for which leave was earlier granted by this court are indicative that there are real issues
H in law and on the facts for the proper determination of the court. These are our reasons in full.

Background Facts

[5] Bearing in mind that the appeal emanates from an interlocutory
I application and that we are not concerned with the merits of the claims (see *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd*

[1993] 4 CLJ 7), these are the underlying facts surrounding the parties before us as well as some who are not, mentioned for reasons that would soon become apparent. A

[6] The appellants comprise largely the original participants selected by FELCRA Berhad to open or clear and develop 2,656 acres of Lot 1404 Mukim Rantau Panjang, Daerah Rantau Panjang, Jajahan Pasir Mas, Kelantan. This area came to be known as Kawasan Rancangan FELCRA Bukit Tandak (KRBT), developed under the Land (Group Settlement Areas) Act 1960 (Act 530) since early 1980. The participants of such group settlement areas are colloquially known as "settlers" by virtue of the name of the Act. But, under Act 530 and subject to the terms prescribed under Act 530, the participants are known as "holders". Some of the other appellants are the beneficiaries and/or descendants of these original settlers or holders. The distinction between the appellants is not, in our view, material at this point in time of the proceedings between the parties. In fact, it is a matter to be carefully explored. Again, this is mentioned for obvious reasons given that the matters before the court was an interlocutory application to strike out the appellants' claims where the legal principles are trite. B C D

[7] KRBT was never gazetted as a group settlement area under s. 4 of Act 530. Be that as it may, the appellants claimed that they were initially allocated 6 acres of land each in KRBT as agreed in an agreement with FELCRA which however was not formalised. Still, the appellants occupied the lands allotted and they cultivated amongst others, oil palm and rubber trees, spending what they say, substantial sums over the past 30 over years. At the same time, the appellants were also alienated separate parcels of land within KRBT for them to erect their dwelling or residential houses – see para. 365 of the statement of claim. E F

[8] According to para. 363 of the statement of claim, the respondents are said to be aware of the appellants' presence and occupation of the lands in KRBT for the last 30 years even though no agreement was ever signed with FELCRA or the respondents. Throughout this period, the appellants engaged with FELCRA and attended all meetings called by FELCRA in relation to the development of KRBT. G

[9] In 2014, the acreage allotted was allegedly reduced to 3 acres per participant. The appellants were not happy and so they sued the first and second respondents over this reduction in acreage *vide* Civil Suit No: DA-21 NCvC-1-04-2015 (Suit 1). Suit 1 was dismissed by the High Court and the decision was affirmed by the Court of Appeal. Leave to appeal was refused by the Federal Court. H

[10] When Suit 1 was before the Federal Court, the first respondent called for tenders for the felling of rubber trees which the appellants claimed they had planted on the lands in question. And so, the appellants filed a second suit (Civil Suit No: DA-21NCvC-14-09-2018 – Suit 14). The defendants I

there were the respondents in this appeal and also the Director of Lands and Mines, Kelantan. The latter was successful in striking out the claim but before the respondents' application for the same was heard, the appellants discontinued Suit 14.

[11] Then came the present suit (Suit 3). There are five defendants in this suit. The respondents in this appeal were the first and second defendants, namely Pentadbir Tanah Jajahan Pasir Mas and the State Government of Kelantan while the third to fifth defendants are the parties who were successful in the tender exercise and who were awarded the contract to sell the rubber trees. This appeal only concerns the first two defendants. The plaintiffs did not file an application for leave to appeal to the Federal Court against the third to fifth defendants.

[12] In Suit 3, the appellants claimed that despite being fully aware of their cultivation of the rubber trees for over 30 years, the respondents *inter alia* conspired, acted with *mala fides* and/or negligence in felling the rubber trees without their prior knowledge or consent and that such acts were a violation of their legitimate rights over the rubber trees. The appellants claimed damages and compensation for loss of the rubber trees. Other reliefs sought included declaratory orders of entitlement to the rubber trees planted by them.

[13] These contentions are not in serious dispute by the respondents in this appeal – see paras. 17 to 19 of their defence; where the respondents principally pleaded that the appellants' participation in the group settlement area programme for KRBT did not alter the fact that the respondents remain legal owners of the lands involved. However, the respondents contended that the appellants were not registered administratively with FELCRA – see para. 27 of the defence.

[14] In addition, the respondents relied on s. 5 of the National Land Code, that any rubber trees planted by the appellants were the property of the respondents as the second respondent owned the lands in question. Consequently, the respondents were not obliged whether to inform or obtain the consent of the appellants before felling or entering into tenders for the felling of the rubber trees.

[15] The respondents also counterclaimed. Relying on the dismissal of Suit 1 and the subsequent dismissal of the application for leave to appeal by the Federal Court, the respondents sought a declaratory order to the effect that the rubber trees on the lands in question were lawfully owned by the second respondent. The respondents' counterclaim currently is fixed for case management at the High Court.

[16] The respondents filed encl. 29 to strike out the claim on the basis of *res judicata* in that the appellants' claim had been adjudicated in Suit 1 where it was held that the appellants did not have any rights in law or equity against the respondents.

Decision Of The High Court

[17] In allowing the respondents' application, the High Court gave two reasons for its decision. First, under s. 5 of the National Land Code (NLC), the plaintiffs had no rights over the rubber trees that they had planted on lands belonging to the second respondent. Second, the plaintiffs' right to the lands had already been dismissed in an earlier suit. That decision had been upheld on appeal and leave to appeal was disallowed by the Federal Court. Since the plaintiffs had no rights over the lands, they therefore had no rights over the rubber trees that they had planted on the same lands.

[18] Relying on the decision in *Wiggins Teape (M) Sdn Bhd v. Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd & Ors As Objectors* [1979] 1 LNS 125; [1980] 2 MLJ 45 on the interpretation of s. 5 of the NLC, the learned judge held that "land" comprised "fixtures" which "includes all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface". Consequently, it was immaterial who planted the rubber trees, even if it was the plaintiffs since the plaintiffs did not own the lands in the first place. The learned judge went on to hold that the second respondent in fact owned the rubber trees.

Decision Of The Court Of Appeal

[19] The Court of Appeal agreed with the High Court, that the appellants had no rights to or in the rubber trees under ss. 5 and 341 of the NLC "just because they had planted them at their own costs on the State land *albeit* to the knowledge of the respondents and without any protest from them". The Court of Appeal further found that the rubber trees were planted on unalienated State land; that there was no plea or assertion that there was any contract or representation relating to the use or occupation of the lands in question or the planting of the rubber trees so as to give rise to a claim of some species of equitable right or estoppel, compounded by the fact that the lands were never gazetted and/or brought into the ambit of Act 530. According to the Court of Appeal, "without any legitimate legal basis disclosed in the pleadings to the appellants' claim to ownership or rights in the rubber trees planted, neither in law nor in equity, the appellants' claims against the respondents are obviously unsustainable".

Our Decision

[20] Broadly and for a proper appreciation of the context of the plaintiffs and their claims against the respondents, we need to have some rudimentary understanding of the applicable law even for the purposes of determining an

application to strike out a claim. In this context, it is Act 530, its purpose and its operation. This understanding is necessary in order to address the question of whether the appellants' claim is "obviously unsustainable".

[21] Act 530 is an "Act for the purpose of ensuring uniformity of law and policy in respect of the establishment of group settlement areas and the conditions of alienation and occupation of land in such areas and for other matters incidental thereto". This Act envisages the opening up and development of State lands through group settlement programmes or projects according to the terms, conditions, restrictions, obligations and arrangements as set out in Parts II to V of the Act.

[22] Tracts of State lands are first declared as designated areas for the purposes of Act 530 – s. 3. In turn, these areas may be declared as group settlement areas – s. 4. These group settlement areas may then be declared as rural or urban holdings (ss. 5 and 6) and persons eligible under the Act to occupy the holdings occupy the same in expectation of title (ss. 12 and 19).

[23] Participants who are invited to participate in the programme to clear the lands allocated and cultivate crops as specified in s. 5 of the Act on such lands. These participants or settlers live in these group settlement areas and form pioneer generations of families.

[24] These group settlement areas are developed, managed and administered by a Development Authority, namely the Federal Development Land Development (better known as FELDA), established under the Land Development Act 1956 [Act 474] – see s. 34 of Act 530 and s. 3 of Act 474. By virtue of the National Land Rehabilitation and Consolidation Authority (Incorporation) Act 1966 [Act 398], FELCRA, the Federal Land Consolidation and Rehabilitation Authority, was established. Under s. 6 of Act 398, FELCRA was *inter alia* conferred all the powers and duties previously undertaken by FELDA. Pursuant to the National Land Rehabilitation and Consolidation Authority (Succession and Dissolution) Act 1997 [Act 570], FELCRA's property, rights and liabilities were vested in a company, FELCRA Berhad, the entity identified in the earlier paragraph.

[25] In the present appeal, what is clear and undisputed from the pleadings and the affidavits filed is that there is a group settlement area known as KRBT. Whether or not this area has been gazetted and its ramifications on the appellants' claim, if at all, is a question for determination at a full trial.

[26] We appreciate that Suit 1 was dismissed. Suit 1 concerned the issue of acreage allegedly promised to the appellants. But, in Suit 3, we are not concerned with the issue of acreage of the lands allotted to the appellants. The issue is whether the appellants have any legitimate interest in the rubber trees that they had cultivated over the 30-year period as described earlier.

[27] Regardless the acreage of the lands comprised in KRBT, the presence and thereby the appellants' occupation and participation in the KRBT is in fact not denied by the respondents. We have already pointed this out. The respondents were fully aware of the occupation of the appellants and that such occupation as a group settlement area was as envisaged under Act 530. The respondents too, are not suggesting for a moment that the appellants are illegal occupants, squatters or some similar characterisation; and this was confirmed by learned counsel for the respondents in this appeal.

[28] What is also not in dispute is that the appellants had occupied these lands in the KRBT for over 30 years. As mentioned, subject to the conditions under Act 530, occupation in these group settlement areas involves an occupation in expectation of title. During this long-extended period of occupation, the appellants had been allowed to cultivate and did in fact cultivate oil palm trees and rubber trees. Both of these crops are crops designated as appropriate crops to be planted – see s. 5 of Act 530; again, as confirmed by learned counsel for the respondents when queried by this court.

[29] The matter of the felling of the rubber trees arose during the pendency of Suit 1. Hence, the issue of *res judicata* does not arise. It also does not arise in that these were not rubber trees randomly planted by the appellants but were rubber trees planted or cultivated in the circumstances that we have painstakingly described earlier.

[30] What is further not in dispute is that under Act 530, any area of State land, whether or not included in a designated area may be declared to be a group settlement area for the purposes of Act 530 – see s. 4.

[31] What was and is in controversy is the manner of selection of the appellants as participants to occupy and cultivate the designated crops under Act 530, that it was by FELCRA Berhad where no agreement was finally drawn up; that the appellants' names were not registered, and that the lands in question were not gazetted. Whether in these principal circumstances, the appellants have any interests or rights to the rubber trees that they had cultivated for such a long undisturbed period thereby entitling them to any relief including compensation, is a real and substantive matter or issue of law clearly requiring full and proper examination at trial.

[32] We are in no doubt that on the pleaded facts and circumstances particularly under the restrictions and conditions of Act 530, the appellants do have a reasonable cause of action which merit proper determination and not summarily disposed of in the manner conducted by the courts below. The law on striking out is settled; so long as there is a reasonable cause of action, the matter should proceed to full trial. See *Tan Wei Hong & Ors v. Malaysia Airlines Bhd & Other Appeals* [2018] 9 CLJ 425; [2019] 1 MLJ 59; *Seruan*

A *Gemilang Makmur Sdn Bhd v. Kerajaan Negeri Pahang Darul Makmur & Anor* [2016] 3 CLJ 1; [2016] 3 MLJ 1; *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* (*supra*).

[33] As we said at the outset, the four questions of law for which leave was granted by the Federal Court are indicative that there are real issues in law
B and in fact for determination at a full trial and which in our opinion is sufficient basis to find a cause of action. As such we are of the unanimous opinion that the appeal is allowed with costs and the matter be remitted to the High Court for a full trial. The orders of the High Court and the Court of Appeal are therefore set aside.

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[34] Accordingly, we do not see the necessity of answering the four leave questions as these are matters for the High Court to decide.

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